



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2005

Mr. Rusty Meurer
Kazen, Meurer & Perez, L.L.P.
P.O. Box 6237
Laredo, Texas 78040

OR2005-05827

Dear Mr. Meurer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227541.

Laredo Community College (the "college"), which you represent, received a request for documents related to a recently completed construction project for the college. You state that release of some of the requested information may implicate the proprietary interests of third parties.¹ Accordingly, you inform us and provide documentation showing that you notified the interested parties, PBK, Gensler, the American Institute of Architects ("AIA"), and Satterfield & Pontikes Construction, Inc. ("S&P"), of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted arguments and information.

Initially, we note that you have only submitted the "General Conditions of the Contract for Construction" for our review. *See* Gov't Code § 552.301(e)(1)(D). As you have not

¹ Although you raise sections 552.101, 552.136, and 552.137 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302.

submitted the remainder of the requested information, we assume the college has released this information or made it available for inspection to the extent the college maintained it on the date the college received this request. If not, the college must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We also note that section 552.305 of the Government Code allows an interested third party ten business days from the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received arguments from PBK, Gensler, AIA, or S&P for withholding the submitted information. Therefore, we have no basis to conclude that the release of any of the submitted information would harm the proprietary interests of these third parties. *See* Gov't Code § 551.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, we conclude that the college may not withhold any portion of the submitted information on the basis of any proprietary interest that PBK, Gensler, AIA, and S&P may have in the information.

Because the college does not oppose disclosure and because the interested third parties have failed to submit arguments that an exception to disclosure applies, we have no basis for finding that the submitted information may be withheld. As you acknowledge, however, the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). In summary, the college need only provide access to the submitted information; it need not furnish copies.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

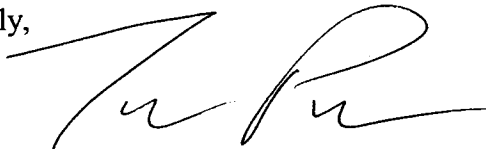
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAP', is written over the word 'Sincerely,'.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 227541

Enc. Submitted documents

c: Mr. George G. McCarthy, Jr.
Attorney at Law
4232 North I-35
Denton, Texas 76207
(w/o enclosures)